

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17049 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

BALVANTBHAI ISHWARBHAI BARAIYA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 17049 of 2003
MS DR KACHHAVAH for Petitioner No. 1
MR KAMLESH KACHHAVAH for Petitioner No. 1
Ms. Mita Panchal, AGP for Respondent No. 1-3
-

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 03/05/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 28.11.2003 passed by respondent no.1 herein, in exercise of the

powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that two FIRs were filed against the petitioner before J P Road police station at C.R.No.139/03, 398/03 on 21.4.2003 and 19.11.2003 for offence punishable u/s.66, 65, 81 and 116 of the Bombay Prohibition Act, 1949.

3. It was also alleged against the petitioner that two witnesses had given statements against the petitioner saying that he was engaged in bootlegging activities. On the strength of the aforesaid registered offences and two statements of unnamed witnesses, the detaining authority found that the petitioner was required to be detained, with a view to prevent him from indulging in bootlegging activities which amounted to a threat to public order and accordingly, the order of detention was passed against the petitioner.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. The petitioner has challenged the said order on several grounds. However, it has been contended that the petitioner had submitted his representation to the Commissioner of Police and though the detention was not approved, the Commissioner of Police had not considered the representation of the petitioner but had simply forwarded the same to the State Government. That therefore, the petitioner's right of making effective representation and getting appropriate decision thereon has been frustrated and, therefore, further continuance of the petitioner's detention is not legal and justifiable. That therefore the petitioner deserves to be released from the detention.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita Panchal, learned AGP has appeared on behalf of the respondents. The learned AGP produces on record a communication received from the Government dated 10.12.2003 as well as a communication received from the Commissioner of Police dated 3.12.2003 which are taken on record. Learned Advocate for the petitioner also produces on record an order of the State Government confirming the detention order passed by the Commissioner of Police which is also taken on record.

6. I have heard the learned advocates for the parties and have perused the papers. At the hearing, learned Advocate for the petitioner has argued that the

State Government has approved the detention of the petitioner by order dated 5.12.2003 which has been produced today. It also comes on record that prior to the said date, representation was made to the Commissioner of Police dated 3.12.2003 and the Commissioner of Police appears to have forwarded it to the State Government. It shows that on 3.12.2003, the date on which the Commissioner of Police has forwarded representation to the State Government, the order of detention was not approved by the State Government. Therefore, it was the power, function and duty of the Commissioner of Police to deal with and decide the representation of the petitioner. Instead of considering the representation, the Commissioner of Police seems to have forwarded the same to the State Government.

7. It is not much in dispute that the petitioner had a vested right of making his representation under Article 22 (5) of the Constitution of India. The right to submit representation is coupled with a right to get a decision thereon. Therefore, when the representation was received by the Commissioner of Police, it was his duty to consider and decide the same. In the present case, we find that instead of deciding the representation, the Commissioner of Police had forwarded the representation to the State Government. As stated above, at that point of time, the State Government had not approved the detention order of the petitioner. Therefore, it was within the power, function and duty of the Commissioner of Police to consider and decide the said representation which has not been done by him. This means that the petitioner is deprived of his right to get his representation decided as early as possible. Since the said right has been denied, further continuance of his detention is not legal and justifiable. Consequently, the petitioner is required to be released from detention which can be done by quashing and setting aside the impugned order of detention.

8. For the foregoing reason, this petition is allowed. The impugned order of detention dated 28.11.2003 passed by respondent no.1 against the petitioner, is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

(D. P. Buch, J.)

msh

